Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES COURT

RODNEY F. WRIGHT,
Plaintiff-Appellant,

vs.

TERRY WAGNER; et. al,
Defendants-Appellees.

On Petition for a Writ of Certiorari to the United States Court
Of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

RODNEY F. WRIGHT
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46 11

Question Presented

1. Is the ruling by the Ninth Circuit, affirming the decision by the District Court for the District of Oregon, contrary to the Federal Tort Claims Act, 28 U.S.C.A. subsection 2401(b), and 28 U.S.C.A. subsection 2674?

2. Is the ruling by the Ninth Circuit, affirming the decision by the District Court for the District of Oregon, contrary to the Federal Rules for Civil Procedure Rule 1 and Rule 15(a)?

List of Parties

The parties are Rodney F. Wright, as the pro se plaintiff, and the State of Oregon, Oregon State Police, Oregon Department of Corrections, The Honorable James R. Ellis, James J. McIntyre, John K. Hoover, Michael D. Schrunk, The Honorable Robert L. Kirkman, Diane Rea, Dianne L. Middle, Ronald C. Ruecker, Multnomah County, Laurie Calderbank, David A. Bordeaux, Tawnie Gray, Sandy Rorick, Dan Noelle, Elyse Clawson, Alan Trautwein, the City of Portland, Terry Wagner, and Ronald Sturdevant, Richard Wollert, Carl Landowske, and Richard Wollert, Ph.D., & Associates, David Audet, Wade P. Bettis, John C. Geil, Gary Kahn, and Rieke, Geil & Savage, P.C. are the defendants.

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The Petition Should Be Granted Because The Ruling By The Ninth Circuit Is Contrary To Federal Rules Of Civil Procedure, Pursuant to The Federal Rules of Civil Procedure Rule 15(a), And Is An Abuse Of Discretion, Pursuant To The Federal Rules Of Civil Procedure Rule 1, When Denying Pro Se Plaintiff The Opportunity To Freely Amend Plaintiff's Original Complaint.

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PETITION FOR A WRIT OF CERTIORARI

Rodney F. Wright, pro se plaintiff, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeal for the Ninth Circuit in this case.

OPINIONS BELOW

Nature of the Proceedings

This is an appeal from an order in Case No. 02-01422-BR, entered on August 18, 2003 by Judge Pregerson, Reinhardt, and Graber, Circuit Judges for the U. S. Court of Appeals for the Ninth Circuit. The relief sought is reversal of the Order and remand to the Ninth Circuit of Appeals for further proceedings.

Nature of the Judgment

In the United States Court of Appeals for the Ninth Circuit, an order affirming a decision in Case DC# CV-01-01422-BR from the U. S. District Court for the District of Oregon. The opinion of the Court of Appeals is reported in (Not For Publication) Memorandum of Case No. 02-36115.

Jurisdiction

On August 18,2003, the Court of Appeals for the Ninth Circuit denied the suggestion for rehearing en banc and the petition for rehearing by the panel. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Effective Dates

The Order was entered on August 18, 2003. The petition for Certiorari was served and filed on November 3, 2003.

STATUTORY PROVISIONS INVOLVED

F.R.C.P. Rule 1. - Scope and Purpose of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

F.R.C.P. Rule 15. Amended and Supplemental Pleadings

(a) Amendments.

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence.

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments.

An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the United States Attorney, or United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings.

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party pleads to the supplemental pleading, it shall so order, specifying the time therefore

28 U.S.C.A. Section 2401. Time for commencing action against United States

(a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C.A. Section 2674. Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised can be briefly stated:

A. Course of proceedings in the 42 U.S.C.A. 1981, 1983, 1985(3) and 1986 case now before this Court.

On 9/26/2001, Plaintiff filed Federal Civil Rights complaint in civil case no. 01-01422-BR.

On 2/20/2002, the District Judge enters Initial Opinion and Order in civil case no. 01-01422-BR.

On 11/15/2002, the District Judge enters Second Opinion and Order in civil case no. 01-01422-BR.

On 11/15/2002, the District Judge enters Judgment of Dismissal against Plaintiff's Federal Civil Rights complaint in civil case no. 01-01422-BR.

On 11/22/2002, Plaintiff filed Notice of Appeal to the Ninth Circuit in civil case no. 01-01422-BR.

On 5/20/2003, the panel for the U.S. Court of Appeals for the Ninth Circuit issues a Not for Publication Memorandum affirming the District Judge decision in civil case no. 02-36115.

On 8/18/2003, the panel for the U. S. Court of Appeals for the Ninth Circuit filed an order in case no. 02-36115 denying plaintiff's petition for rehearing en banc.

REASON FOR GRANTING THE WRIT

Review Is Warranted Because The Dismissal Of Plaintiff's Civil Rights Petition By The Ninth Circuit, Affirming the District Court's Decision, Is Contrary To The Federal Tort Claims Act, Pursuant To 28 U.S.C.A. Subsection 2401(b), And 28 U.S.C.A. Subsection 2674 For The "Accrual" Cause Of Action Standard, And Is An Abuse Of Discretion Which Unfairly Foreclosed The Legitimate Claims Of Plaintiff.

Plaintiff, appearing pro se, filed his civil rights complaint alleging a racially motivated conspiracy from multiple defendants while acting under the color of law in relation to plaintiff's only conviction. Plaintiff alleged that the defendants conducted unconstitutional behavior which;

1. lead to the non-consensual entry in plaintiff's home without probable cause and or a search warrant for plaintiff's arrest;

2. resulted in the failure of defense attorneys to investigate, file pertinent motions, and act on motions filed before the court, of Suppression, to Compel Production and In Limine, raise objections, pertaining to plaintiff's arrest, lack of preliminary hearing, release at the trial court level and allow plaintiff the right to appear in person to enter a plea.

3. resulted in the failure of trial court to conduct preliminary hearings to determine the probable cause of plaintiff's arrest, conduct an arraignment on the second accusatory instrument, conduct a release hearing, rule on motions filed before the court, and allow plaintiff the right to appear in person to enter a plea.

4. resulted in the intentional filing of a second accusatory instrument while plaintiff was still being detained under the influence of fear produced by threats.

5. resulted in the failure of prosecuting attorneys to intentional use coerced and inadmissible testimony before the grand jury, file duplicate charges creating double jeopardy, and allow plaintiff the right to appear in person to enter a plea.

6. resulted in the failure of the sentencing court to impose constitutionally, federal and state, bound sentencing

7. resulted in the failure of appellate and post-conviction attorneys to raise and argue any of the aforementioned discrepancies before the appropriate state court.

8. resulted in plaintiff's illegal detention for thirty days for alleged parole violation without ever receiving a formal hearing pertaining to plaintiff's incarceration.

Plaintiff understands that the time of accrual of a civil rights action is a question of federal law. *Kaiser v. Cahn*, 510 F.2d 282, 285 (2 Cir. 1974).

In addition, federal law holds that the time of accrual is when plaintiff knows or has reason to know of the injury, which is the basis of the action. *Young v. Clinchfield R.R. Co.*, 288 F.2d 499, 503 (4 Cir. 1961).

The District Court, in its Opinion and Order, dated February 20, 2002, concerning the accrual standard to be used in plaintiff's cause, stated the following:

> "Plaintiff has not pled any facts from which the Court could infer that Plaintiff did not know of his alleged injury at the time of the alleged wrongful conduct. The Court, therefore, concludes each of Plaintiff's claims accrued at the time of the alleged wrongful conduct."

Plaintiff believes that based upon the aforementioned statement, the District Court has chosen to use the "moment of injury" standard of accrual in plaintiff's action. Therefore, plaintiff must argue against the District Court's use of the "moment of injury" standard of accrual because it is

inconsistent with the language quoted in *Cox v. Stanton*, 529 F.2d 47 (1975). It has been noted that the "moment of injury" standard has the significant advantage of often avoiding factual controversy. Based upon the aforementioned, standard of accrual used by the District Court, plaintiff's claims, prior to September 26, 2001 were time-barred.

Plaintiff believes that the proper standard of accrual as required by the Supreme Court's opinion in *United States v. Kubrick*, 100 S.Ct. 352, 62 L.Ed.2d.259 (1979) applies in plaintiff's civil rights matter. The Supreme Court rejected this standard which would allow the statute of limitations to commence running before the plaintiff was or should have been aware of the casual connection between plaintiff's injury and the acts of the defendants. Plaintiff must be in possession of the "critical facts that he has been hurt and who has inflicted the injury," *id.*, the statute of limitations does not commence to run.

The District Court, in its Opinion and Order, dated February 20, 2002, did accept that some of plaintiff's later claims were not time-barred as stated in the following:

> "Plaintiff alleges he was detained for 30 days ...beginning on November 4, 1999...to deprive him of his rights under state and federal constitutions."
>
> and
>
> "Although it is difficult to determine the exact nature of Plaintiff's many claims, it is clear Plaintiff's allegations also involve events occurring within the two-year limitation period...The Court, therefore, must determine where Plaintiff can effectively state claims against any of the Defendants based on these later events."

Furthermore, the District Court stated the following concerning the time of accrual.

> "Although the Court is uncertain whether Plaintiff can correct this deficiency by repleading, the Court grants Plaintiff leave to amend his Complaint to...with respect to state law claims against these Defendants that accrued on or after September 26, 2001."

Plaintiff must contend that if any portions of plaintiff's claims are not time-barred, then all of plaintiff claims are not time-barred. All of plaintiff's claims arise from plaintiff's only conviction.

In *Urie,* plaintiff brought suit under the Federal Employer's Liability Act against the trustee of the Missouri Pacific Railroad claiming compensation for the silicosis he contracted during thirty years of work as a fireman on the railroad's steam locomotives. *Urie v. Thompson,* 337 U.S. 163, 69 S.Ct. 1018, 93 L.Ed. 1282(1963). The limitation period was two years. Although the acts causing the silicosis happened over the course of three decades and the plaintiff doubtlessly contracted the disease long before he filed the suit, the Court permitted the action because Urie filed a year after his condition was diagnosed.

Like Urie, plaintiff filed within the limitations period after his deprivation was blatantly revealed to plaintiff due to the lack of a formal hearing concerning plaintiff's illegal detention. *See also Portis v. United States,* 483 F.2d 670 (4th Cir. 1973)

Therefore, plaintiff believes that his conclusions are buttressed by *Urie v. Thompson,* 337 U.S. 163, 69 S.Ct. 1018, 93 L.Ed. 1282 (1963), especially because plaintiff has also alleged the violation of other civil rights preceding the permanent civil rights violation requiring plaintiff to lifetime registration.

In the memorandum by the Ninth Circuit panel, dated May 12, 2003, affirming the decision by the District Court, they stated the following.

> "The district court properly dismissed Wright's complaint for failure to state a claim because he failed to allege any facts to support a claim of conspiracy. *See Karim-Panahi v. Los Angeles Police Dep't,* 839 F. 2d 621, 625 (9th Cir. 1988)."

Yet, based upon aforementioned "moment of injury" standard of accrual used by the District Court, against plaintiff's claims, plaintiff must contend that the vital elements of his conspiracy claims were rendered unsustainable and void. The fundamental conspiracy claims of plaintiff were time-barred by the District Court as occurring before the September 26, 2001 date.

Plaintiff believes that if plaintiff is given the opportunity to have his claims adjudicated upon, based on the merits, the facts will support plaintiff's claim of a conspiracy.

Plaintiff must also argues against the Ninth Circuit panel's decision assertions, in light of the accrual standard used, "moment of injury," by the District court. Since the District Court conceded that some of Plaintiff's claims are not time-barred, plaintiff must contend that all of his claims, arising from only one conviction, should be reinstated. *Cline v. Brusett,* 661 F.2d, 108, 111 (9th Cir. 1981).

Review Is Warranted Because The Dismissal Of Plaintiff's Civil Rights Petition By The Ninth Circuit, Affirming the District Court's Decision, Is Contrary To The Federal Rules Of Civil Procedure, Pursuant to 28 U.S.C.A. Rule 15(a), And Is An Abuse Of Discretion, Pursuant to the Federal Rules of Civil Procedure Rule 1, When Denying Plaintiff The Opportunity To Freely Amend Plaintiff's Original Complaint.

While Federal Rules of Civil Procedure Rule 15 places leave to amend within the sound discretion of the trial court, plaintiff must contend that a court must remain guided by "the underlying purpose of Rule 15... to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb,* 655 F.2d 977, 979 (9th Cir. 1981); *see also Conley v. Gibson,* 355 U.S. 41, 48, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), and not to erect formal and burdensome impediments in the litigation process.

A pro se litigant must be given leave to amend his or her complaint unless it is "absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Broughton v. Cutter Laboratories,* 622 F.2d 458, 460 (9th Cir. 1980) (Per Curiam).

The Supreme Court has held that allegations of a pro se plaintiff's pleadings are held to less stringent standards than formal pleadings drafted by lawyers. *Haines v. Kerner,* 404 U.S. 519,520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)(Per Curiam). The Supreme Court has also instructed the lower courts to heed carefully the command of Rule 15(a), F.R.Civ.P. by freely granting leave to amend when justice so requires. *Foman v. Davis,* 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d. 222 (1962)

Unless there is undue delay, bad faith, futility of amendment, and or prejudice to the opposing party will result, a trial judge should ordinarily permit a party to amend it complaint. *See Middle Atlantic Utilities Co. v. S.M.W. Development Corp.*, 392 F.2d. 380 (2d Cir. 1968); Brier v. Northern California Bowling Proprietors' Ass'n, 316 F.2d 787 (9th Cir. 1963). Based upon Plaintiff original complaint, the District Court, in its Order and Opinion, dated February 20, 2002, made no mention in terms of undue delay, bad faith, futility of amendment, and or prejudice to the Defendants.

Plaintiff believes that if the underlying facts or circumstances relied on by plaintiff may be proper subject of relief, then he ought to be afforded the opportunity to test his claim on merits and therefore should be permitted to amend his complaint. Federal Rules of Civil Procedure, Rule 15(a)

"The Federal Rules reject the approach that pleadings is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson,* 355 U.S. 41, 48. 78 S.Ct. 99, 103, 2 L.Ed. 2d 80. The Rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action." Federal Rules of Civil Procedure, Rule 1.

Plaintiff understands that the granting or denial of opportunity to plaintiff to amend complaint is within the discretion of the federal district court. Federal Rules of Civil Procedure, rule 15(a).

The District Court, in its Opinion and Order, dated February 20, 2002, stated some limitations to the amendments of plaintiff's original complaint as follows;

"Plaintiff may amend his Complaint only as to the claims against the following Defendants: State of Oregon (for injunctive relief only)...Plaintiff's Amended Complaint may not include any claims based on actions that occurred more than two years before Plaintiff filed his original Complaint...

Finally, to the extent Plaintiff asserts claims based on a racially-motivate conspiracy arising within two years of the filing of his original Complaint, Plaintiff must plead sufficient facts to support such a conspiracy."

Not only were plaintiff claims, before September 26, 2002, improperly dismissed by the District Court ruling, but plaintiff must contend that the remaining claims were unfairly restricted.

Plaintiff contends that the outright refusal of the federal district court to grant plaintiff leave to amend complaint, without any justifying reason appearing for denial, is not an exercise of discretion by the court, but is abuse of discretion and inconsistent with the spirit of Federal Rules of Civil Procedure. Federal Rules of Civil Procedure, Rule 15(a).

In the memorandum by the Ninth Circuit panel, dated May 12, 2003, they stated the following.

"The district court did not abuse its discretion by dismissing the action without leave to amend because further amendment would have been futile. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31(9th Cir. 2000)(en banc). **AFFIRMED."**

Yet, plaintiff must argue that the District Court never afforded pro se plaintiff the opportunity to amend plaintiff's original complaint, especially concerning "when" plaintiff knew of or had reason to know of the injuries inflicted, which was the core of this civil rights violation.

Therefore, plaintiff believes that the abuse of discretion, by the District Court, was only compounded by the Ninth Circuit panel's ruling. The Ninth Circuit's ruling did not take into consideration that the plaintiff was never given leave, by the District Court, to amend the accrual element of plaintiff's claims. The accrual standard, as stated in the court's Opinion and Order, dated February 20, 2002, inferred plaintiff's knowledge or realization of these injuries before November 4, 1999.

Plaintiff must contend that he should have been granted leave to amend his original complaint concerning when plaintiff knew of or had reason to know of the injuries inflicted, which were the core of plaintiff's civil rights violations.

Plaintiff did attempt to clarify this oversight to the Ninth Circuit by filing a petition for rehearing en banc. The Ninth Circuit panel advised the full court of the petition for rehearing en banc and, unfortunately for plaintiff, no judge requested a vote on whether to rehear the matter.

Conclusion

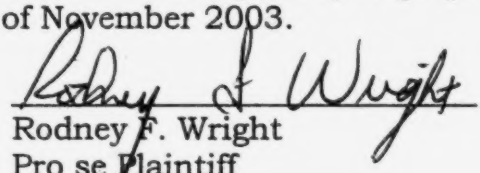
In conclusion, plaintiff must contend that the lower court dismissal of plaintiff's petition is contrary to the Spirit of the Federal Rules of Civil Procedure Rule 1 and the Federal Rules of Civil Procedure Rule 15(a).

Furthermore, plaintiff must contend that the lower courts decision are an abuse of discretion, pursuant to the Federal Tort Claims Act, pursuant to 28 U.S.C.A. subsection 2401(b), and 28 U.S.C.A. subsection 2674.

This petition for writ of certiorari should therefore be granted.

Respectfully submitted under the penalty of perjury

Dated this 3rd day of November 2003.



Rodney F. Wright
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APPENDIX A

FILE STAMPED
DISTRICT COURT OF OREGON
February 20, 2002
By Clerk, U.S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
CIVIL NO. 01-1422-BR
RODNEY F. WRIGHT,
Plaintiff,

v.

STATE OF OREGON; CITY OF PORTLAND; OREGON STATE POLICE; OREGON DEPARTMENT OF CORRECTIONS; THE HONORABLE JAMES R. ELLIS; JAMES J. McINTYRE; JOHN K. HOOVER; MICHAEL D. SCHRUNK; THE HONORABLE ROBERT L. KIRKMAN; DIANE REA; DIANNE L. MIDDLE; RONALD C. RUECKER; MULTNOMAH COUNTY; LAURIE CALDERBANK; DAVID A. BORDEAUX; TAWNIE GRAY; SANDY RORICK; DAN NOELLE; ELYSE CLAWSON; ALAN TRAUTWEIN; TERRY WAGNER; RONALD STURDEVANT; RICHARD WOLLERT; CARL LANDOWSKE; RICHARD WOLLERT, PH.D., & ASSOCIATES; DAVID AUDET; WADE P. BETTIS, JR.; JOHN C. GEIL; GARY KAHN; AND RIEKE, GEIL & SAVAGE, P.C.,
Defendants.

OPINION AND ORDER

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BROWN, Judge

Plaintiff, appearing pro se, filed a Complaint alleging civil rights and state law claims against more than 30 individuals and entities. This matter comes before the Court on five Motions to Dismiss filed by Defendants (#3, #13, #17, #31, #35).

The Motions to Dismiss filed by the Attorney Defendants (#3) and the Wollert Defendants (#35) are **GRANTED** on the ground that all of Plaintiff's claims against these Defendants are barred by the applicable statute of limitations. Plaintiff action against these Defendants, therefore, is dismissed with prejudice. The Motions to Dismiss filed by the State, County and City Defendants are **GRANTED in part** and **DENIED in part** as set forth herein.

PROCEDURAL BACKGROUND[1]

Plaintiff was arrested in November 1989. On February 5, 1990, after a stipulated facts trial in Multnomah County Circuit Court, Plaintiff was convicted of Two counts of Sexual Abuse in the First Degree, seven counts of Sexual Abuse in the Second Degree, and one count of Public Indecency. He was sentenced to five years in the Oregon State Penitentiary. As a condition of parole, Plaintiff also was required to undergo sex offender evaluation and treatment.

Plaintiff unsuccessfully challenged his conviction by direct appeal. *See State v. Wright*, 109 Or. App. 495, 820 P.2d 824 (1991). Plaintiff then filed a Petition for Writ of Habeas Corpus in federal court pursuant to 28 U.S.C. subsection 2254 in which he challenged his state court conviction and sentence. Both the district and the Ninth Circuit denied his petition. *See Wright v Baldwin*, 98 F.3d 1348 (9th Cir. 1996) (unpublished opinion affirming denial of Plaintiff's habeas petition). Plaintiff was released from prison in September, 1996. Thereafter, as required by the conditions of his release, Plaintiff underwent sex offender treatment and was required to register as a sex offender.

STANDARDS

On a motion to dismiss, under Fed. R. Civ. P. 12(b), all

[1] The procedural history is taken from Plaintiff's Complaint as well as public state records.

allegations in the complaint are considered true and are construed in the plaintiff's favor. *Meek v. County of Riverside,* 183 F.3d 962, 965 (9th Cir.), cert. denied, 120 S. Ct. 499 (1999). Moreover, when the plaintiff appears pro se, the court "must liberally construe[the plaintiff's] inartful pleading." *Ortez v. Washington County,* 88 F.3d 804, 807 (9th Cir. 1996). When the plaintiff appears pro se in a civil rights case in particular, the court must construe the pleadings liberally and afford the plaintiff the benefit of any doubt. *Karim-Panahi v. Los Angeles Police Dep't,* 839 F.2d 621, 623 (9th Cir. 1988). A pro se litigant must be given leave to amend his complaint unless it is "absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Sands v Lewis,* 886 F.2d 1166, 1168 (9th Cir. 1989)(citation omitted).

DISCUSSION

Plaintiff contends his arrest, prosecution, conviction, unsuccessful direct appeal, and the restrictive conditions of his post-prison supervision were the result of a conspiracy by Defendants to deprive him of his civil rights based on his race in violation of the United States Constitution and various federal and state statutes. Eleven years after his conviction, he now seeks to recover money damages from the City of Portland, Multnomah County, and the State of Oregon as well as from the detectives who arrested him, the lawyers who represented him, the judges who tried and sentenced him, the individuals involved in his parole and post-prison supervision, and the doctors who administered the required sex offender treatment.

Defendants raise various challenges to Plaintiff's Complaint, including judicial and prosecutorial immunity; failure to comply with Oregon's Tort Claims Act, Or. Rev. Stat subsection 30.275; lack of personal jurisdiction; failure to state a claim; and failure to commence this action within the time limited by law. The majority of Plaintiff's claims appear to be time-barred based on the statue of limitations.

1. **Plaintiff's Claims that Accrued Prior to September 26, 1999 are Time-Barred.**

Plaintiff filed his Complaint on September 26, 2001. He asserts claims arising from actions that occurred between 1989 and 1999. The bulk of Plaintiff's claims stem from his arrest and conviction in 1989 and 1990, his efforts to obtain post-conviction relief in 1992, and his post-prison supervision in 1996. In addition, he challenges his detention beginning in November 1999 and the requirement that he register as a sex offender in December 1999. Plaintiff alleges civil rights claims under 42 U.S.C. subsections 1981, 1983, 1985(3) and 1986.

Claims arising under subsection 1981, 1983, 1985(3) and 1986 are characterized as personal injury actions, and the applicable statute of limitations for each is determined by state law. *Addisu v. Fred Meyer, Inc.,* 198 F.3d 1130, 1140, (9th Cir. 2000)(subsection 1981); *Davis v. Harvey,* 789 F.2d 1332, 1333 (9th Cir. 1986)(subsection 1983).[2] Personal injury claims arising in Oregon are subject to a two-year statute of limitations under Or. Rev. Stat. subsection12.110 (1). *Plumeau v. Yamhill County School Dist. No. 40,* 130 f.3d 432, 438(9th Cir. 1997). Plaintiff's federal claims, therefore, are subject to a two-year statute of limitations.

Plaintiff was incarcerated in April 1990. While Plaintiff was incarcerated, Or. Rev. Stat. subsection 12.160(3) tolled the running of the statute of limitations for claims that accrued during his imprisonment.[3] Until it was amended in 1997, Or. Rev. Stat. subsection 12.160(3) provided:

> If, at the time a cause of action accrues, any person entitled to bring an action... is...imprisoned on a criminal charge, ... the time of such disability shall not be a part of the time of such disability for the

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[2] Plaintiff's claims under subsection 1985(3) and 1986 consist of allegations that Defendants conspired to violate Plaintiff's constitutional rights. For purposes of the statute of limitations analysis, therefore, the Court treats these claims the same as the claims brought under subsection 1983.

[3] Or. Rev. Stat. subsection 12.160 was amended effective October 4, 1997 to remove the provision tolling the limitations period for commencement of a cause of action by incarcerated persons. See 1997 Oregon Laws Chapter 339.

> commencement of the action; but the period within which the action shall be brought shall not extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases.

Plaintiff alleges his parole commenced on July 23, 1996. The Court infers, therefore, that Plaintiff was released from physical custody at that time. Pursuant to Or. Rev. Stat. subsection 12.160(3), Plaintiff had to file his action within one year after his release, or two years from the date his claim accrued, whichever was later. *See Boag v. Chief of Police,* City of Portland, 669 F.2d 587, 589 (9th Cir. 1982) ("Under the most liberal construction given to subsection 12.160 by the Oregon courts the plaintiff may file suit (1) within the applicable statute of limitations or (2) within one year of the date of termination of disability, whichever is later.")

While state law determines the period of limitation, federal law determines when a cause of action accrues. *Cline v. Brusett,* 661 F.2d, 108, 111 (9th Cir. 1981). Under federal law, an action accrues when "a plaintiff knows or has reason to know of the injury which is the basis of his action." *Id.* Plaintiff has not pled any facts from which the Court could infer that Plaintiff did not know of his alleged injury at the time of the alleged wrongful conduct. The Court, therefore, concludes each of Plaintiff's claims accrued at the time of the alleged wrongful conduct.

Based upon the foregoing, claims arising from conduct that allegedly occurred prior to Plaintiff's incarceration in 1990 are time-barred. The tolling provision of Or. Rev. Stat. subsection 12.160 does not apply to these claims because Plaintiff was not incarcerated at the time they accrued. *See id. See also Or. Rev. Stat. subsection 12.160* (1985).

Plaintiff's claims arising from conduct that allegedly occurred between April 1990 and September 26, 1996, also are time-barred.

Plaintiff had one year following his release on September 26, 1996, to file any action regarding the claims that accrued during his incarceration. Plaintiff, however, did not file the Complaint in this matter until September 26, 2001, which was five years after his release from prison.

2. **Claims that Accrued Within Two Years of September 26, 2001 Are Not Time-Barred.**

Although it is difficult to determine the exact nature of Plaintiff's many claims, it is clear Plaintiff's allegations also involve events occurring within the two-year limitation period. Complaint at 21, 24. The Court, therefore, must determine where Plaintiff can effectively state claims against any of the Defendants based on these later events.

Plaintiff alleges he was detained for 30 days at the Multnomah County Justice Center beginning on November 4, 1999, for alleged post-prison supervision violations. He contends his detention violated various Oregon statute and was part of a racially-motivated conspiracy to deprive him of his rights under state and federal constitutions. Plaintiff also alleges Defendant Sturdevant and Wagner, detectives with the City of Portland Police Bureau, compelled Plaintiff to sign sex offender registration forms between November 16, 1999 and December 11, 1999. Plaintiff also challenges numerous Oregon statutes as unconstitutional.

Plaintiff names the following Defendants in connection with his claims arising during and after November 1999: Multnomah County and its employees Gray, Trautwein, Calderbank, Rorick, Clawson; City of Portland and its employees Detective Sturdevant and Wagner (Plaintiff also alleges Detectives Sturdevant and Wagner were "registering agents on behalf of the Oregon State Police"); and Oregon State Police and its employee Ruecker.

Only Plaintiff's claims against these Defendants that arose during and after November 1999 are potentially viable; therefore, Plaintiff's remaining claims against these and all other Defendants must be dismissed with prejudice.

A. **Plaintiff Failed to Allege Compliance with Oregon's Tort Claims Act.**

Or. Rev. Stat. subsection 30.275 prohibits any action based on state law against a public body or an officer, employee, or agent of a public body unless the plaintiff first gives notice of the claim within 180 days after the alleged loss or injury. In order to plead a state law tort claim against a public body or its employees, a plaintiff must allege sufficient notice was given to satisfy the requirement of Or. Rev. Stat. subsection 30.275. Plaintiff failed to do so. In his complaint, therefore, Plaintiff fails to plead any state law tort claim against the City of Portland, Multnomah County, the State of Oregon, or any of their employees acting in their official capacities.

Although the Court is uncertain whether Plaintiff can correct this deficiency by repleading, the Court grants Plaintiff leave to amend his Complaint to address the issue of notice as set out above with respect to state law claims against these Defendants that accrued on or after September 26, 2001.

B. **The Record is Inadequate to Determine Whether Defendants Were Properly Served.**

The Multnomah County Defendants, the City Defendants, and the State Defendants contend this Court lacks personal jurisdiction over them because Plaintiff failed to properly serve them with the Complaint. None of these Defendants, however, cites any authority in support of their argument.

> A federal court does not have jurisdiction over a defendant unless the defendant has been served properly under Fed. R. Civ. P. 4. However, Rule 4 is a flexible rule that should

> be liberally construed so long as a party receives sufficient notice of the complaint. Nonetheless, without substantial compliance with Rule 4 neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction.

Direct Mail Specialists, Inc. v. Eclat Computerized Technologies, Inc., 840 F.2d 685, 688 (9th Cir. 1988)(internal quotations and citations omitted).

Fed. R. Civ. P. 4(j)(2) provides for service upon a state, municipal corporation, or other governmental organizations "by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by" state law. None of the Defendants addresses whether Plaintiff effected service by serving a copy of the Summons and complaint on the Defendants' chief executive officers. Instead, each Defendant skips to the second part of Fed. R. Civ. P. 4(j)(2) and contends generally that Plaintiff failed to effect service under Oregon law. Aside from citing to ORCP 7, however, no Defendant analyzes the requirements for proper service under Oregon law.

In *Baker v. Foy,* 310 Or. 221, 797 P.2d 349 (1990), the Oregon Supreme Court articulated a two-part test fro determining the adequacy of service under ORCP 7. First the court must determine whether the method used was permitted by ORCP 7 D and was accomplished in accordance with ORCP 7 D(2). *Id.* at 228-29. If so, service is presumed adequate. If the requirements of ORCP 7 D are not met, then the court must consider whether service is otherwise adequate under the reasonable notice standard set forth in ORCP 7 (D)(1). *Id.* The court must examine the totality of the circumstances, as they were known to the plaintiff at the time of service and determine whether service was adequate to provide the defendant with

reasonable notice of the existence and dependency of the action against him. *Hoeck v. Schwabe, Williamson & Wyatt,* 149 Or. App.. 607, 617, 945 P.2d 534 (1997).

The Court cannot determine from the existing record whether service was adequate under Oregon law. It is unclear whether Plaintiff properly effected service on each of the Defendants, and there is no evidence as to whether the method of service was "reasonably calculated, under all the circumstances, to apprise the defendant of the pendency of the action and to afford the defendants a reasonable opportunity to appear and defend." *Baker,* 310 OR. at 229. If Plaintiff served Defendants by certified mail only, such service is not specifically permitted under ORCP 7 D(3) on any of the City , State, or County Defendants in either their official or individual capacities. Plaintiff, therefore, bears the burden to show that service was reasonably calculated to inform Defendants of the actions against them and to afford them a reasonable opportunity to defend. *See Edwards v. Edwards,* 310 Or. 672, 678-79. 801 P.2d 782 (1990). Plaintiff must plead facts showing service was made on each Defendant in compliance with Oregon Law because Plaintiff bears the burden of establishing adequacy of service.[4]

Based on the foregoing and due to an inadequate record, the Court denies Defendants' Motion to Dismiss for lack of personal jurisdiction based on improper service of process. The Court, however, grants Defendants leave to raise this issue again based upon a more complete record.

[4] If Defendants later succeed in establishing that Plaintiff did not properly serve them, any remaining claims may be barred by the two-year statute of limitations. Although Plaintiff may correct inadequate service by properly serving Defendants, and such corrected service will be beyond the two-year limitation period and, therefore, Defendants may still be able to establish such claims are time-barred.

C. The Record Is Insufficient to Determine Whether Defendants Sturdevant and Wagner Are Entitled to Qualified Immunity.

Detectives Sturdevant and Wagner contend they are entitled to qualified immunity. The court finds it difficult, however, to determine from the Complaint and Defendants' Motions the exact nature of Plaintiff's allegations against Detectives Sturdevant and Wagner. The Court, therefore, cannot determine at this stage of the litigation whether Detectives Sturdevant and Wagner are entitled to immunity.[5] Accordingly, the Court denies the City Defendant's Motion to Dismiss Plaintiff's claims against Detectives Sturdevant and Wagner to the extent the Motion is based on the defense of qualified immunity. The Court, however, granted these Defendants leave to raise this issue again when the record has been developed more fully.

D. Defendants State of Oregon, Oregon State Police, and Ruecker in His Official Capacity are Immune Pursuant to the Eleventh Amendment.

Defendants State of Oregon and the Oregon State Police and its employee Ronald Ruecker contend Plaintiff's claims against them are barred under the Eleventh Amendment.[6] Under the Eleventh Amendment,[7] "an unconsenting State is immune from suits brought in federal court by her own citizens as well as by citizens of another State." *Edelman v. Jordan,* 415 U.S. 651, 663 (1974).

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[5] The Court notes it would be more appropriate to raise the issue of qualified immunity by a motion for summary judgment after the factual record has been more fully developed.

[6] Although the Oregon Department of Corrections and its employees also contend Plaintiff's claims against them are barred by the Eleventh Amendment, their contentions are moot in light of the Court's ruling that Plaintiff's claims against these Defendants are barred by the statute of limitations.

[7] The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by citizens of the United or any Foreign State." U.S. Const. amend XI.

Immunity under the Eleventh Amendment extends to employees of the State who are sued in their official capacity. *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 67 (1989).

Neither the State of Oregon nor the Oregon State Police have consented to this suit. Plaintiff's claims against them for money damages, therefore, are barred by the Eleventh Amendment. Plaintiff, however, also named Defendant both "personally and in his official capacity as director of the Oregon State Police." Complaint at 6, paragraph 31. Insofar as Plaintiff seeks to hold Defendant Ruecker liable in an individual capacity, the Eleventh Amendment does not bar Plaintiff's claim.

Plaintiff also asserts claims for injunctive relief. Plaintiff alleges the Oregon statutes requiring sex offender treatment and registration are unconstitutional, and he seeks to enjoin the State Defendants from enforcing them. The Eleventh Amendment does not bar Plaintiff's claim against the State Defendants for prospective injunctive relief. *See Austin v. State Indus. Sys.,* 939 F.2d 676, 680 n.2 (9th 1991). Plaintiff's claims for prospective injunctive relief against the State Defendants, therefore, remain potentially viable. 33333

E. **The Rooker-Feldman Doctrine Does Not Bar Plaintiff's Action.**

The State, County, and City Defendants also contend Plaintiff's action is barred by the Rooker-Feldman doctrine, which prohibits federal courts from reviewing final determinations of state court proceedings. *See Worldwide Church of God v. McNair,* 895 F.2d 888, 890 (9th Cir. 1986). Defendants assert Plaintiff's claims are "directed at getting this Court to review state court decisions made during his state court criminal proceedings." After reviewing the Complaint, the Court, however, cannot determine that was Plaintiff's only

intent. Plaintiff alleges he was illegally detained beginning November 4, 1999, and improperly compelled to register as a sex offender in December 1999. He also challenges the constitutionality of various Oregon statutes regarding sex offender registration. Construing the Complaint in the light most favorable to Plaintiff, the Court cannot conclude that Plaintiff only seeks review of a state court determination. In his prayer for relief, however, Plaintiff specifically asks to have his state "arrest and conviction record" expunged. The Court concurs that this type of relief is barred by Rooker-Feldman. The Court, therefore, directs Plaintiff to strike that language from his prayer if he chooses to amend his Complaint.

3. **Summary of Permissible Amendments.**

Plaintiff may amend his Complaint only as to the claims against the following Defendants: State of Oregon (for injunctive relief only), Multnomah County, Gray, Trautwein, Calderbank, Rorick, Clawson, City of Portland, Sturdevant, and Wagner.

Plaintiff's Amended Complaint may not include any claims based on actions that occurred more than two years before Plaintiff filed his original Complaint.

In addition, Plaintiff must plead facts to show he complied with the requirement of the Oregon Tort Claims Act, Or. Rev. Stat. subsection 30.275, with respect to any state law claims against public bodies or their employees. If Plaintiff cannot assert truthfully that he complied with the Act's requirements, he may not plead any state law claims against any public bodies or their employees acting in their official capacities.

Plaintiff also must plead facts sufficient to enable the Court to determine whether Plaintiff adequately served all remaining Defendants with the original Summons and Complaint pursuant to ORCP 7.

Finally, to the extent Plaintiff asserts claims based on a racially-motivate conspiracy arising within two years of the filing of his original Complaint, Plaintiff must plead sufficient facts to support such a conspiracy.

CONCLUSION

The Motions to Dismiss filed by the Attorney Defendants (#3) and the Wollert Defendant (#35) are **GRANTED** on the ground that all of Plaintiff's claims against these Defendants are barred by the applicable statute of limitations. Plaintiff's action against these Defendants is **DISMISSED WITH PREJUDICE.** The Motions to Dismiss filed by the State, County and City Defendants are **GRANTED in part** and **DENIED in part** as set forth above.

The Court grants Plaintiff leave to amend his Complaint by March 22, 2002, consistent with this Opinion and Order.

IT IS SO ORDERED.

DATED this 20th day of February, 2002.

/s/Anna J. Brown

United States District Judge

APPENDIX B

FILE STAMPED
U.S. COURT OF APPEALS

May 20, 2003
Cathy A. Catterson,
Clerk, U.S. Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 02-36115

DC#CV-01-01422-BR

RODNEY F. WRIGHT,
Plaintiff-Appellant,
v.
TERRY WAGNER; RONALD STURDEVANT; et al.,
Defendants-Appellees,
and,
REIKE, GEIL & SAVAGE;
GARY KAHN,
Defendants.

MEMORANDUM

Appeal from the United States District Court for the District of Oregon
Anna J. Brown, District Judge, Presiding
Submitted May 12, 2003
Before: PERGERSON, REINHARDT, and GRABER, Circuit Judges.

Rodney F. Wright appeals pro se the district court's judgment dismissing for failure to state a claim his action alleging defendants conspired to violate his constitutional rights during his arrest, incarceration, and post-prison supervision which included requiring him to register as a sex offender. We have jurisdiction pursuant to 28 U.S.C. subsection 1291. We review de novo, *Resnick v. Hayes*, 213 F.3d 616, 623 (9th Cir. 2000), and we affirm.

The district court properly dismissed Wright's complaint for failure to state a claim because he failed to allege any facts to support a claim of conspiracy. *See Karim-Panahi v. Los Angeles Police Dep't*, 839 F. 2d 621, 625 (9th Cir. 1988)

The district court did not abuse its discretion by dismissing the action without leave to amend because further amendment would have been futile. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31(9th Cir. 2000)(en banc). **AFFIRMED.**

APPENDIX C
FILE STAMPED
U.S. COURT OF APPEALS

August 18, 2003
Cathy A. Catterson,
Clerk, U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NO. 02-36115
DC#CV-01-01422-BR
OREGON (PORTLAND)
RODNEY F. WRIGHT,
Plaintiff-Appellant,
v.
TERRY WAGNER; RONALD STURDEVANT; et al.,
Defendants-Appellees,
and,
REIKE, GEIL & SAVAGE;
GARY KAHN,
Defendants.

ORDER

Before: PERGERSON, REINHARDT, and GRABER, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

No further filings shall be accepted in this closed appeal.

APPENDIX D

Section 1981. Equal rights under the law

(a) Statement of equal rights
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
(b) "Make and enforce contracts" defined
For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
(c) Protection against impairment
The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

APPENDIX E

Section 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX F

Section 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties
If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;
(2) Obstructing justice; intimidating party, witness, or juror
If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;
(3) Depriving persons of rights or privileges
If two or more persons in any State or Territory conspire or go

in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

APPENDIX G

Section 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.